



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2019-0222]

RIN 1625-AA00

Safety Zone; Mississippi Sound, Biloxi, MS

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in Mississippi Sound in Biloxi, MS. The safety zone is needed to protect persons, vessels, and the marine environment in the waters adjacent to Biloxi Beach during an airshow in Biloxi, MS. This rulemaking restricts transit into, through, and within the regulated area unless specifically authorized by the Captain of the Port Sector Mobile (COTP) or a designated representative.

DATES: This rule is effective from 8 a.m. on May 1, 2019 through 5 p.m. on May 5, 2019.

ADDRESSES: You may find supplemental documents identified in the preamble of this rule by searching the docket number USCG-2019-0222 on the Federal eRulemaking Portal at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rulemaking, call or email LT Kyle D. Berry, Sector Mobile, Waterways Management Division, U.S. Coast Guard; telephone 251-441-5940, email kyle.d.berry@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On January 17, 2019, the marine event sponsor for the Thunder over the Sound Air Show submitted an application for a marine event permit. The Captain of the Port Sector Mobile (COTP) has determined a safety zone is needed to protect the persons, vessels, and marine environment in the waters adjacent to Biloxi during the Thunder over the Sound marine event.

The Coast Guard is issuing this safety zone without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a safety zone without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b) (B), the Coast Guard finds that good cause exists for not publishing an NPRM with respect to this rule because it is impracticable. It is impractical to publish an NPRM because this safety zone must be established by May 1, 2019, and

we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the public interest because immediate action is needed to respond to potential safety hazards associated with the Thunder over the Sound air show.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The Captain of the Port Sector Mobile has determined that potentials hazards associated with the Thunder over the Sound air show will be a safety concern for persons, vessels, and the marine environment within the area adjacent to Biloxi Beach in the Mississippi Sound. The purpose of this rule is to ensure safety of the public, participants, spectators, and the marine environment in the regulated area during the event.

IV. Discussion of the Rule

This rule establishes a safety zone from May 1st, 2019 until May 5th, 2019, which will be enforced from 8 a.m. through 5 p.m. daily. The safety zone is intended to protect the persons, vessels, and marine environment from hazards associated with the Thunder over the Sound Air Show.

The safety zone takes place over the Mississippi Sound in Biloxi, MS, encompassing the square show box between positions: Northwest Corner - 30° 23'33.16" N, 88° 55'54.89" W; Northeast Corner - 30° 23'33.55" N, 88° 53'37.88"W; Southwest Corner - 30° 23'30.47" N, 88° 55'54.75" W; Southeast Corner - 30° 23'30.88" N, 88°

53°37.77' W. No vessel or person will be permitted to enter, transit within or through, or exit the safety zone without obtaining permission from the COTP or a designated representative. A designated representative will be a Patrol Commander (PATCOM). Spectator vessels desiring to enter, transit through or within, or exit the safety zone may request permission to enter the regulated from a PATCOM. When permitted to transit the area vessels must follow restrictions within the safety zone as directed by the Coast Guard, and must operate at a minimum safe navigation speed in a manner which will not endanger participants in the safety zone or any other vessels.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This safety zone has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory determination is based on the size, location, and duration of the safety zone. This safety zone impacts a small area of the Mississippi Sound adjacent to Biloxi Beach for nine hours each day over five days. Vessel traffic will be informed

about the safety zone through local notices to mariners. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone and the rule allows vessels to seek permission to transit the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has

implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone encompassing the square show box between the following positions adjacent to Biloxi Beach: Northwest Corner - 30° 23'33.16" N, 88° 55'54.89" W; Northeast Corner - 30° 23'33.55" N, 88° 53'37.88"W; Southwest Corner - 30° 23'30.47" N, 88° 55'54.75" W; Southeast Corner - 30° 23'30.88" N, 88° 53'37.77" W. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration (REC) supporting this determination would be available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add §165.T08-0222 to read as follows:

§ 165.T08-0222 Safety Zone; Mississippi Sound, Biloxi, MS.

(a) Location. The following area is a safety zone: Navigable waters in the Mississippi Sound encompassing the square show box adjacent to Biloxi Beach bound by the following positions: Northwest Corner - 30° 23'33.16" N, 88° 55'54.89" W; Northeast Corner - 30° 23'33.55" N, 88° 53'37.88"W; Southwest Corner - 30° 23'30.47" N, 88° 55'54.75" W; Southeast Corner - 30° 23'30.88" N, 88° 53'37.77" W.

(b) Effective period. This section is effective from 8 a.m. on May 1, 2019 until 5 p.m. on May 5, 2019.

(c) Enforcement period. This section will be enforced from 8 a.m. until 5 p.m. each day of the effective period.

(d) Regulations. (1) In accordance with the general regulations in § 165.23, entry into, transiting through, or exiting from this area is prohibited unless authorized by the Captain of the Port Sector Mobile (COTP) or a designated representative. A designated representative may be a Patrol Commander (PATCOM). The PATCOM will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The PATCOM may be contacted on Channel 16 VHF-FM (156.8 MHz) by the call sign “PATCOM”.

(2) All persons and vessels not registered with the event sponsor as participants or official patrol vessels are considered spectators. The “official patrol vessels” consist of any Coast Guard, state, or local law enforcement and sponsor provided vessels assigned or approved by the COTP to patrol the regulated area.

(3) Spectator vessels desiring to transit the regulated area may do so only with prior approval of the PATCOM and when so directed by that officer will be operated at a minimum safe navigation speed in a manner that will not endanger participants in the zone or any other vessels.

(4) No spectator vessel shall anchor, block, loiter, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel.

(5) Any spectator vessel may anchor outside the regulated area, but may not anchor in, block, or loiter in a navigable channel. Spectator vessels may be moored to a waterfront facility within the regulated area in such a way that they shall not interfere with the progress of the event. Such mooring must be complete at least 30 minutes prior

to establishment of the regulated area and remain moored through duration of the event.

(6) The Patrol Commander may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(7) The Patrol Commander may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property.

(8) The Patrol Commander will terminate enforcement of the safety zone at the conclusion of the event.

(9) Entry into this zone is prohibited unless authorized by the COTP or a designated representative.

(10) Persons or vessels seeking to enter into or transit through the zone must request permission from the COTP or a designated representative. They may be contacted on VHF-FM channels 16 or by telephone at 251-441-5976.

(11) If permission is granted, all persons and vessels must comply with the instructions of the COTP or designated representative.

(e) Informational broadcasts. The COTP or a designated representative will inform the public through Broadcast Notices to Mariners of the enforcement period for the temporary safety zone as well as any changes in the planned schedule.

Dated: April 12, 2019.

M.R. McLellan,
Captain, U. S. Coast Guard,

Captain of the Port Sector Mobile.

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